

BDAC ASSURANCES WORK GROUP

Meeting Summary April 28, 1998

The BDAC Assurances Work Group held its fourteenth meeting on Tuesday, April 28, 1998 from 9:00 a.m. until noon in Room 1131 of the Resources Building.

BDAC Members present:

Hap Dunning
Alex Hildebrand
Rosemary Kamei
Stu Pyle

CALFED Staff/Consultants:

Mary Scoonover	Mike Heaton
Dick Daniel	Sue Lurie
Dave Fullerton	Marti Kie
Michael Ramsbotham	Eugenia Laychak

Others present:

Patrick Wright	Amy Fowler	David Guy
Alf Brandt	Lisa Asche	Fred Kindel
Dan Fults	Megan Rathfon	Jim Monroe
Patrick Leonard	Lori Clamurro	Bill Betchart
Dan Nomellini	Liz Howard	Tom Hagler
Cliff Schulz	Laura King	
George Basye	Tiki Baron	
John Mills	Jim Sung	
Nancee Murray	Norma Miller	
Terry Erlewine	Julie Tupper	

1. Work Group Chair Hap Dunning convened the meeting at 9:00 a.m. Meeting participants introduced themselves.
2. Other than some spelling corrections to the list of participants, there were no changes to the prior meeting summary.
3. Cliff Schulz gave a report on the activities of the Ag-Urban process. The Ag-Urban Assurances and Finance Committee is working on a paper describing the functions

and responsibilities of a new ecosystem program management entity, based on the first report prepared by Betsy Rieke and Doug Kenney. This paper will be presented to the Ag-Urban Policy Group. Ag-Urban is also working on insurance and "no surprises" concepts. Asked how Ag-Urban would propose to provide assurances for operations of a peripheral canal, Cliff said that the basic assurance mechanism is that "mis-operation" of the facility would result in loss of the "no surprises" protection. Also, size provides an assurance.

4. Mary Scoonover described the status of the major elements of program implementation and the assurances package.

a. Implementation Strategy

Mary reported that with the Draft EIR out for public review and comment, implementation and assurances have assumed a higher profile. Stein Buer is now the Implementation Strategy Manager for the CALFED Program and is responsible for the Program Implementation Strategy including development of the implementation plans for the program elements. Assurances and financing will be integrated with the implementation plans into the Strategy.

b. Staging

Staging is the means by which discrete steps or phases will be identified during the long-term implementation period. A specific set or list of actions will be described for each stage, along with milestones and the consequences for missing milestones and criteria for triggering the contingency response process.

c. Contingency Response Process

The contingency response process will identify different types of unforeseeable or unpreventable circumstances and the protocols and procedures for program response.

d. Management and Governance

The major issues are:

- who implements the ERP
- how the program as a whole is coordinated among the various agencies
- the role for stakeholders

e. Conservation Strategy

The Conservation Strategy will be designed to ensure compliance with the federal and state Endangered Species Acts. Staff from the responsible agencies are compiling the species list which will be covered by the Conservation Strategy.

f. Schedule

Mary reported that the hearing process for public comment on the Draft EIR/EIS is underway. The comment period will probably be extended. [Note: comment period was subsequently extended to July 1, 1998.]

Assuming that a draft final EIR/EIS will be ready in September, we will need to have a draft assurances package ready by mid-August. This does not mean having detailed assurances for every element and action. It may be sufficient to describe an implementation schedule, linkages, funding and legal authorities.

5. Assurances for the Levee Stability Element

In response to a request from the Assurances Work Group, the Levee technical team identified a number of issues related to providing assurances for implementation of the levee element.

- a. Funding
- b. Permitting and Regulatory Coordination
- c. Maintenance of the "Common Pool"
- d. Authority to implement the actions
- e. ESA compliance mechanism and "safe harbor" protection
- f. Mitigation and enhancement coordination
- g. Monitoring program
- h. Protection of tax base of local reclamation districts

6. Relationship between ERP and Levee Stability Elements

Dick Daniel and Rob Cooke discussed the relationship between the Ecosystem Restoration Program (ERP) and the Levee Stability element. The basic premise is that there is no inconsistency between the need for levee maintenance and the restoration of tidal wetlands and habitat in the Delta. The ERP will rely on continued maintenance of the levee system. Similarly, the ERP will rely on continuation of the "Common Pool" concept for protection of Delta water quality.

The program managers are looking for ways that the ERP can work with Delta agriculture. One concept under consideration is the use of mitigation banks. For example, while levee cross sections may be maintained with minimum levels of vegetation, counterbalance berms or waterside shelves may provide additional habitat to mitigate or enhance habitat conditions.

There was general discussion among the program managers and the Work Group participants about the relationship between the ERP and the levee stability element.

Some of the issues mentioned were:

- control of exotic species
- the status of the eight western Delta islands (special projects)
- land acquisition in the Delta for ERP
- implementation agency coordination
- local agency coordination
- identification of areas for additional shallow water habitat

Dick Daniel explained that the general approach to the two programs is that the levee program provides mitigation for levee impacts; the ERP provides enhancement.

One participant emphasized that from the Delta perspective, it is important to keep ERP implementation separate from the levee maintenance program. There is a concern that ERP actions may impair the ability to perform adequate and timely levee work. It was mentioned that the agriculture community is conducting discussions on ways to restore habitat and minimize loss of agricultural production.

There was a brief discussion about identifying measurements of success for the levee program and funding options for the levee program, including funding by CVP and/or SWP, G.O. bonds, user fees and/or taxes.

7. Discussion of NRLC memo dated April 13, 1998

This memo is the third in the series from Betsy Rieke and Doug Kenney on the question whether there should be a new entity for the management and governance of the ERP. It identifies seven issues which are important in the consideration of program management and governance, including:

- scope
- function
- membership
- operations
- authorities
- legal structure
- financial resources

The main points of the discussion on this issue were that the agencies are generally concerned about the need for a new entity and do not believe that compelling arguments have yet been made that a new entity is needed. Many stakeholders, on the other hand, believe a new entity is the only way to provide direct stakeholder involvement in the decision-making process, and that a new entity provides the best way for the ecosystem manager to move from a regulatory based resources management approach to a market based approach.

8. Staging

Mary Scoonover discussed a handout illustrating the possible use of linkages, triggers and conditions precedent in the first stage (7 to 10 years) of implementation. This model is intended to provide a way of structuring a decision on conveyance and storage facilities. If this is the approach used by the program, the assurances package will have to shift its emphasis to the early years of implementation, rather than the long-term (25-30 years).

9. Contingency Response Process

Sue Lurie presented a summary of the concepts in the memorandum dated April 15, 1998. The purpose of the contingency response process is to deal with unpreventable or unforeseeable events. These events should be distinguished from problems which can be anticipated and internalized, such as ESA listings.

The memo describes three ways to categorize contingencies: by level, type and effect. Examples are provided to illustrate the categories. One participant suggested that another category might be the level of urgency, i.e, how quickly is a response needed.

There was some discussion about the purpose of the process. The intent is not to develop responses for contingency events, but to develop a process for dealing with them.

There was also some discussion on the point that different parties may have different views of contingency events - what some see as a problem may not be perceived as such by other parties.

One participant made the point that the contingency process should not become a means of "undoing" the assurances package.

10. The next Assurances Work Group meeting is scheduled for May 29, 1998.